

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

LORI ANN MORRIS

Plaintiff,

V.

EDWARD NEAL THOMPSON and
FLORIDA TRANSFORMER,

Defendants.

Civil Action No. 3:05-CV-962-T

MOTION TO CONTINUE

COMES NOW, Defendants Florida Transformer and Edward Neal Thompson, and hereby moves this Court to continue this case from the October 23, 2006 trial term. In support of said motion, Defendant submits the following:

1. The case is presently set for trial during this Court's October 23, 2006 trial term. For the reasons set forth below, this case cannot be ready for trial during that trial term.

2. First of all, the Plaintiff has failed to state with required specificity the exact nature of the claims against these Defendants. In response to the Plaintiff's complaint, Defendants filed a Motion for More Definite Statement. This Court granted this motion on December 7, 2005, and ordered the Plaintiff to comply with the court's order within 14 days. To date, the Plaintiff has failed to comply with the court's order and failed to state with required degree of specificity the exact nature of the claims against these Defendants.

3. In addition, the Defendants have been unable to obtain any discovery from the Plaintiff. First of all, the Plaintiff has yet to respond to the Defendants' initial written

discovery which was filed on or about February 22, 2006. The Court presently has before it a Motion a Compel the Plaintiff to respond to this written discovery.

4. In addition, the Plaintiff has not complied with the Defendants' requests as to dates in which the Plaintiff's experts can be made available for deposition. The Defendants first requested deposition dates on April 5, 2006. (Exhibit 1). After not receiving any response to the initial April letter, Defendants again wrote the Plaintiff, following up on a telephone conversation that took place that day, discussion deposition dates. As noted in that letter, Plaintiff was informed that if no dates were provided by the end of the week, Defendants would have to unilaterally notice those depositions. (Exhibit 2). After having not receiving any response, Defendants noticed the depositions of both the Plaintiff's experts for May 22, 2006. (Exhibit 3). On May 12, 2006, the Defendants received a letter from Plaintiff's counsel stating that one of the experts, Dr. Edward Robinson, could be available for deposition on June 20 or June 22 of 2006. The Plaintiff was not able to provide any dates in which the Plaintiff's other expert, Dr. Andrew LeBleu, was available. (Exhibit 4)

5. On May 12, 2006, after receiving the above-referenced letter, the Defendants faxed the Plaintiff a letter requesting the Plaintiff to contact the Defendants as to how to resolve the issues concerning the depositions of the experts witnesses with regard to the upcoming deadlines. Specifically, pursuant to this court's scheduling order, any dispositive motions must be filed no later than June 7, 2006. As can be seen from this May 12, 2006 letter, Defendants requested that the Plaintiff make their experts available sometime during the month of May or agree to file a joint motion to continue the trial of this matter from the October trial term to the March 12, 2007 trial term. (Exhibit 5).

6. On May 15, 2006, counsel for the Plaintiff and counsel for the Defendants spoke by telephone. Counsel for Plaintiff could not agree to join in on this motion to continue in writing.

7. This matter has not been continued thus far. In addition, the Defendants will be greatly prejudiced if this matter remains on the October 23, 2006 trial term. As noted above, the Plaintiff has not complied with the required amount of specificity of the exact nature of the claims asserted in the lawsuit. In addition, the Plaintiff has failed to respond to the Defendants' written discovery. Finally, the Plaintiff has failed to provide dates in which their experts can be available for deposition, in spite of requests by the Defendants that the Plaintiff do so.

WHEREFORE, premises considered, Defendants respectfully requests that this court enter an order continuing this case from the October 23, 2006 trial term to the March 12, 2007 trial term.

Respectfully submitted,

/s/ Richard E. Broughton

Richard E. Broughton

/s/ W. Evans Brittain

W. Evans Brittain

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CERTIFICATE OF SERVICE

I hereby certify that on this May 17, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Henry Lee Penick
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Manual Notice List

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